

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3842 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
No. 1 Yes Nos. 2 to 5 No

-----  
MANSUKHLAL RAMJIBHAI MARU

Versus

STATE OF GUJARAT

-----  
Appearance:

MR YS LAKHANI for Petitioners

MS SEJAL K MANDAVIA for Respondent No. 1

MS. HARSHA DEVANI, AGP, for Respondent No. 2

-----  
CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 15/07/98

ORAL JUDGEMENT

Rule.

3 Petitioners in this Special Civil Application under Article 226 of the Constitution of India are teachers and they are qualified having qualification of Visharat, Shiksha Visharat and SCC. Petitioner Nos. 1 and 3 are blind and petitioner No. 2 is physically

handicapped. Petitioner Nos. 1 and 3 have completed 18 years of service as music teachers and petitioner No. 2 has completed 9 years of service. The say of the petitioners is that under Resolution dated 24.9.1979 issued by the Department of Finance of the Government of Gujarat they were fixed in the pay scale of Rs. 440-640. The successor in office of respondent No. 3 Shri P.V. Patel issued another Circular on 14.10.1982 saying that the benefit of Resolution dated 24.9.1979 cannot be given to the music teachers. The said letter was challenged before this court by way of Special Civil Application No. 4639 of 1982. Interim relief was granted directing the respondents not to reduce the pay scale of the petitioners and further not to effect the recovery. The said Special Civil Application was disposed of by the order of this court dated on 8.1.1996 directing the respondents to hear the petitioners and pass a fresh order. After hearing the petitioners, the respondents confirmed the order of respondent No. 3 dated 14.10.1982. An affidavit has been filed by Khira Champaklal Chunilal, District Primary Education Officer, District Education Committee, Junagadh, stating that the Resolution dated 24.9.1979 issued by the Finance Department is not applicable in the instant case as the petitioners are primary school teachers and they are governed by the Resolution dated 30.7.1976, which provides the revised pay scale of Rs. 290-560.

It is contended by Mr. Lakhani, learned counsel for the petitioners that the petitioners are entitled to revised pay scale under the Resolution dated 24.9.1979 as the same are applicable to music teachers. He also submitted that Resolution of July though pertained to primary teachers of Taluka but the same will not have application as the petitioners are primary teachers. Ms. Mandavia learned counsel appearing for respondent No. 3 submitted that the petitioners are governed by the Resolution of the Education Department of July, 1976.

I have considered the rival contentions. It appears that music teacher is a cadre in itself which is evident from the Resolution of September, 1979, when it speaks "Pay Scales of MUSIC TEACHERS". It is significant to notice that the qualification of the music teacher is also provided in the said Resolution. It will be profitable to extract the relevant part from the Resolution:-

"Under the Gujarat Civil Services (Revision of Pay) Rules 1975 published in Government Notification, Finance Department No. (GN-71)PCR-275-69-M. dated the 21st October 1975, the pay scales of the posts of "MUSIC

TEACHERS" have been prescribed as under:-

S.No.	Designation	Present scale	Revised scale	Remarks
-----				
Director of Education:				
122.	Music Teacher	155-280 (starting pay Rs.165)	i)440-750	For SSC Sangit Alanker, Sangit Shiksha Visharad and Sangit praviva
			ii)440-640	For S.S. Sangit Visharad plus Sangit Shiksha Visharad.
			iii)290-560	SSC plus Sangit Madhayama and Sangit shikshak sanad.
			iv)260-330	Non-SSC plus sangit Visharad

The petitioners are governed under item No. 2 of serial No. 122 as the petitioner's qualification of Sangit alankar plus Sangit Shiksha Visharad. The Resolution of July 1976 has been issued in exercise of power conferred by the provisions of Bombay Primary Education Act providing pay scale for the primary teachers of the Taluka or District panchayat. Thus, in my view, the petitioners being music teachers were rightly fixed in the revised pay scale of Rs. 440-640 and the order of the respondent No. 2 dated 4.10.1982 staying the benefit of Resolution dated 24.9.1979 and the order rejecting the representation is illegal and void.

In view of the aforesaid, this Special Civil Application is allowed and the following directions are given:-

(1) That the order of respondent No. 3 dated 6.4.1998 and the order dated 14.10.1982 are quashed and set aside.

(2) It is declared that the petitioners as music teachers are entitled to be fixed in the revised pay scale of Rs. 440-640 as per the Resolution dated 24.9.1979.

(3) Petitioner No. 1 and 3 having completed 18 years of service will be entitled to higher pay scale. Petitioner No. 2 on completion of 9 years of service will also be entitled to higher pay scale.

(4) They will also be entitled to benefit of recommendations of the Fifth Pay Commission in accordance with the directions issued by the State Government of Gujarat from time to time.

(5) The petitioners shall also be entitled to two increments which have been withheld since 1990.

(6) Consequently they will also be paid arrears accrued to them on account of withholding of increments.

Rule made absolute to the aforesaid extent. No order as to costs.

00000

[pkn]